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FISCAL IMPACT STATEMENT

LS 6902 | **NOTE PREPARED:** Feb 20, 2006
BILL NUMBER: HB 1279 | **BILL AMENDED:** Feb 16, 2006

SUBJECT: Telecommunications.

FIRST AUTHOR: Rep. Murphy | **BILL STATUS:** CR Adopted - 2nd House
FIRST SPONSOR: Sen. Hershman

FUNDS AFFECTED: X GENERAL | **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) *Utility Consumer Counselor & Other Occupations:* This bill prohibits the Utility Consumer Counselor from engaging in another occupation that would conflict with the duties of the office. (Current law prohibits the counselor from engaging in any other occupation.)

Public Utility Definition Change: The bill specifies that a person that transmits communications through Internet Protocol enabled services is not a public utility.

Changes to IURC Jurisdiction, Authority & Duties: The bill prohibits the IURC from exercising jurisdiction over:
(1) advanced and broadband services; and
(2) information services.

This bill specifies that the IURC shall not exercise jurisdiction over commercial mobile service. It prohibits, after March 27, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service. The bill also specifies that "basic telecommunications service" does not include functionally equivalent service provided by a person that transmits communications through Internet Protocol enabled services.

This bill prohibits, after June 30, 2009, the IURC from exercising jurisdiction over basic telecommunications service. It makes conforming changes to the laws concerning rural telephone cooperatives.

The bill prohibits the IURC from exceeding the authority delegated to it under federal law with respect to:
(1) interconnection;

(2) the resale of telecommunications service; and
(3) unbundled network elements.

This bill requires the IURC to biennially identify and eliminate telecommunications regulations that are no longer necessary in the public interest or for the protection of consumers.

The bill also preserves the IURC's duties with respect to:
(1) dual party relay services;
(2) the 211 dialing code;
(3) slamming and cramming laws;
(4) universal service;
(5) certificates of territorial authority;
(6) mediating or arbitrating disputes between providers;
(7) interconnection agreements; and
(8) rates charged by an incumbent local exchange carriers to a pay phone service provider.

The bill allows the IURC to require communications service providers, other than commercial mobile service providers, to report annually, or more frequently at the option of the provider, information on:
(1) service quality and performance;
(2) the provider's dark fiber in Indiana; and
(3) the types of communications service offered by the provider and the areas in Indiana in which those services are offered.

This bill requires the IURC to adopt rules requiring a telecommunications service provider, whenever the provider communicates with a residential customer about changing the customer's basic telecommunications service to nonbasic telecommunications service, to notify the customer of:
(1) the option of basic telecommunications service; and
(2) any regulatory protections the customer would forego by switching to nonbasic telecommunications service.

The bill, with respect to telecommunications service providers and video service providers, allows the IURC to:
(1) order certain equitable remedies; and
(2) impose a civil penalty of not more than $10,000; if a service of the provider over which the commission has jurisdiction is unsafe, unjustly discriminatory, or inadequate, or if the service cannot be obtained.

The bill provides that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana.

The bill prohibits the IURC from requiring a multichannel video programming distributor to pay any fee or charge, other than a franchise fee paid to a local unit, as a condition of receiving or holding a state certificate of franchise authority.

This bill requires the IURC to adopt rules to establish the Indiana Lifeline Assistance Program to provide reduced charges for basic telecommunications service for eligible customers.

The bill requires the IURC to collect, on at least an annual basis, certain data concerning the build out of video service infrastructure in each metropolitan statistical area in Indiana during the period beginning July 1, 2006, and ending June 30, 2010. The bill also requires the IURC to include the data collected in the IURC's report to the Regulatory Flexibility Committee due July 1, 2010. This bill repeals superseded statutes.

Provider Rate Increases: This bill provides that during the period beginning March 28, 2006, and ending June 30, 2009, a provider may increase the flat monthly rate for basic telecommunications service:

(1) not more than once; and
(2) by not more than $1;

every 12 months. The bill provides that not later than 18 months after a provider's first rate increase in a local exchange area, the provider must offer broadband service to at least 50% of households in the local exchange area. This bill requires an incumbent local exchange carrier (ILEC) to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on March 27, 2006.

Provider Requirements & Changes: The bill provides that after June 30, 2009, a provider that offers basic telecommunications service in Indiana:

(1) must offer a flat monthly rate for unlimited local calling in each exchange area in which the provider offers basic telecommunications service; and
(2) may not offer any service plan that includes measured local service.

The bill also allows a provider of last resort to meet its obligations using any available technology.

This bill exempts commercial mobile service providers from certain reporting requirements, while requiring commercial mobile service providers to provide the IURC certain customer service contact information. This bill also allows the IURC to revoke a certificate of territorial authority issued to a communications service provider if the provider fails or refuses to comply with the reporting requirements.

The bill provides that the IURC may not require a provider to provide communications service to occupants of multitenant nonresidential real estate if the owner, operator, or developer of the property does any of the following to benefit another provider:

(1) Permits only one provider to install communications facilities or equipment on the premises.
(2) Accepts incentives from a provider in exchange for allowing the provider the exclusive right to provide service to the premises.
(3) Collects charges from occupants for communications service.
(4) Enters into a prohibited agreement with a provider.

It prohibits a communications service provider from entering into an agreement after March 27, 2006, that requires any person to restrict or limit the ability of another provider to obtain:

(1) easements or rights-of-way; or
(2) access to real property.

This bill preserves the manner of determining gross revenue and franchise fee percentages set forth in existing local franchises.

The bill prohibits the IURC from requiring a provider to satisfy any build-out requirements.

Discrimination by Providers: This bill provides that such laws may not:

(1) discriminate against a provider based on the technology used to deliver service; or

(2) allow a video service system owned or operated by a local unit to use rights-of-way on more favorable terms.

Denial of Access: The bill prohibits a provider from denying access to video service to any group of potential subscribers based on income.

Certificate of Territorial Authority Changes: The bill, after June 30, 2009, requires a communications service provider to obtain a certificate of territorial authority from the IURC before offering communications service in Indiana. This bill also requires the IURC to issue a certificate not later than 30 days after receiving a complete and accurate application from a provider. It provides that the IURC may not require a provider to file a tariff as a condition of receiving a certificate. The bill allows the IURC to condition the issuance of a certificate on a provider's agreement to provide advance notice to customers of increases in rates or services.

This bill provides that a certificate of public convenience and necessity issued to an REMC may serve as a certificate of territorial authority for communications service provided by the REMC, subject to the IURC's right to require the REMC to provide certain information about the communications services provided.

Franchise Agreements: The bill also provides that the holder of a state issued franchise must comply with state and local laws governing the use of rights-of-way.

It allows the holder of a local franchise on June 30, 2006, to:

(1) continue providing service under the local franchise until the local franchise expires; or

(2) terminate the local franchise and apply to the IURC for a state-issued franchise.

The bill provides that a provider that terminates a local franchise remains subject to any obligations owed to a private person under the franchise until the time the terminated franchise would ordinarily expire.

This bill prescribes requirements concerning public, educational, and governmental channel capacity and financial support.

The bill provides that a video service provider in a unit that has an existing, a terminated, or an expired local franchise is required to continue providing institutional network capacity and video service to community public buildings until January 1, 2009, or until the local franchise will expire or would have expired, whichever is later.

Indiana Finance Authority: This bill also provides that the Indiana Finance Authority shall determine underserved areas within Indiana for purposes of the Indiana broadband development program.

Effective Date: (Amended) Upon passage; July 1, 2006; July 1, 2009.

Explanation of State Expenditures: (Revised) This bill contains provisions that will add responsibilities to the IURC and that will remove responsibilities from the Commission. Because the Commission's responsibilities encompass all utility types, it is unknown what proportion of the Commission's spending is related to telecommunications.

The bill also requires the IURC to report to the Regulatory Flexibility Committee on its analysis of various issues concerning the telecommunications industry, including the status of competition in the industry and the availability of various telecommunication services in Indiana. The bill requires the IURC to report the results of this analysis to the Committee by July 1, 2010.

The bill also makes changes to the IURC's annual reports. The reports will still be made each year on July 1, but under the bill must include the following items:

(1) An analysis of competition and technological change on telecommunication pricing and universal service.

(2) An analysis of competition and technological change on video service including:

(A) the number of channels offered;

(B) the technologies used to provide video service; and

(C) effects of competition and pricing on the availability of video service;

(3) In odd-numbered years the report must include:

(A) an identification of all telecommunications rules and policies that the IURC eliminated in the most recent state fiscal year; and

(B) an explanation of why these rules and policies are no longer necessary.

Explanation of State Revenues: (Revised) *Public Utility Fund:* The operating budgets of the IURC and the Office of the Utility Consumer Counselor (OUCC) are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2005, fees from the utilities and fines generated approximately $11.7 M.

This bill removes entities that transmit communications through Internet Protocol-enabled services from the definition of public utility. Therefore, these entities will no longer be required to pay the Public Utility Fee. Revenue to the Public Utility Fund will not decrease, however. Because the Commission bases its Public Utility Fee on the gross revenue of public utilities, the rate will increase for the remaining public utilities to create a fee that will generate the necessary amount of revenue.

(Revised) *Rates & Charges:* The IURC, under the bill, will retain jurisdiction with respect to:

(1) dual-party relay services;

(2) the 211 dialing code;

(3) slamming and cramming laws;

(4) universal service;

(5) certificates of territorial authority;

(6) mediating or arbitrating disputes between providers;

(7) interconnection agreements; and

(8) rates charged by incumbent local exchange carriers to a pay phone service provider.

The bill also provides that after July 1, 2009, telecommunications carriers providing basic telecommunications will no longer be subject to the Commission's approval for setting rates and charges for service. Such services are subject to the state Sales Tax. Revenues generated by telecommunications carriers' services may increase or decrease subject to fluctuation in the carriers' rates and charges. State Sales Tax revenue is deposited in the following funds: General Fund, Property Tax Replacement Fund, Public Mass Transportation Fund, Industrial

Rail Service Fund, and the Commuter Rail Service Fund.

The bill also provides for a structure of rate increases that can be implemented between March 2006 and June 2009. A provider can increase rates one time every 12 months, and by not more than $1 every 12 months during the March 2006 to June 2009 period.

(Revised) *Civil Penalties*: The bill, with respect to telecommunications service providers and video service providers, allows the IURC to:

(1) order certain equitable remedies; and

(2) impose a civil penalty of not more than $10,000; if a service of the provider over which the commission has jurisdiction is unsafe, unjustly discriminatory, or inadequate, or if the service cannot be obtained.

Civil penalties that are collected for violations that affect customers of a provider are to be refunded to the customers through credits on bills. Civil penalties collected for any violation other than to customers are to be deposited in an account designated by the Indiana Finance Authority to be used for making loans and grants available for broadband developers and operators under the Indiana Broadband Development program established by IC 8-1-33-15.

(Revised) *Indiana Lifeline Assistance (ILA) Program:* This provision will cause an indeterminable increase in expenditures for the IURC and OUCC. The ILA Program will provide basic telecommunication services at a reduced rate to eligible customers. An eligible customer is defined as a person who: (1) has an income at or below 150% of the federal poverty level; and (2) has a child who receives any of the following:

(A) Medicaid.

(B) Food stamps.

(C) Supplemental Security Income.

(D) Federal public housing assistance.

(E) Home energy assistance under a program administered by the Division of Family Resources under IC 12-14-11.

(F) Assistance under the federal Temporary Assistance to Needy Families (TANF) program (45 CFR 260 et seq.).

(G) Free lunches under the national school lunch program.

The cost of this program is indeterminable. The IURC will be required to determine the funding for the program. The bill requires that funding be determined to reimburse the providers for the lost revenue associated with providing eligible customers this reduced rate service, and to reimburse the IURC for reasonable administration expenses. The bill does not provide a funding source for this program.

Explanation of Local Expenditures: Municipal utilities are not subject to the Public Utility Fee.

Explanation of Local Revenues:

State Agencies Affected: Indiana Utility Regulatory Commission; Attorney General.

Local Agencies Affected: Units having franchises with video service providers.

Information Sources: Indiana Utility Regulatory Commission.

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